

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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GUEORGUI GANTCHEV and GEORGES AND GEORGES LLC dba LV CARS, a Nevada limited liability company,

Case No. 2:17-cv-00185-RFB-DJA  
Case No. 2:17-cv-01692-JAD-CWH

## Plaintiffs,

## **ORDER**

V.

3RD GENERATION INC. dba CALIFORNIA AUTO FINANCE, CARLOS NAVAS, DOES I-X and ROE CORPORATIONS I-X.

## Defendants.

3RD GENERATION INC. dba CALIFORNIA  
AUTO FINANCE, a California corporation.

### Counterclaimant.

V.

GEORGE'S AND GEORGE'S, LLC d/b/a LV Cars, a Nevada limited liability company; GUEORGUI GANTCHEV, individually, and as Manager for GEORGE'S AND GEORGE'S, LLC d/b/a LV Cars, a Nevada limited liability company; DOES I-X; and ROE CORPORATIONS I-X.

## Counterdefendants

## I. INTRODUCTION

26 Before this Court are Defendants' Motion for Summary Judgment (ECF No. 54) and  
27 Plaintiffs' Motion for Summary Judgment (ECF No. 55). For the reasons stated below, the Court  
28 grants in part and denies in part Defendants' motion and denies Plaintiffs' motion.

1                   **II. PROCEDURAL BACKGROUND**

2                   On January 23, 2017, Plaintiff Gueorgui Gantchev filed his Complaint with Jury Demand  
3 against California Auto Finance, L.P. ECF No. 1. On March 22, 2017, Gantchev filed an  
4 Amended Complaint against Defendants Carlos Navas and 3rd Generation Inc. d/b/a as California  
5 Auto Finance. ECF No. 10. On April 4, 2017, Gantchev filed a Second Amended Complaint  
6 against Defendants. ECF No. 13.

7                   On April 18, 2017, Defendants filed a Motion to Dismiss. Gantchev responded and  
8 Defendants replied. ECF Nos. 16, 19.

9                   On May 3, 2017, Gantchev sought leave to file a Third Amended Complaint. ECF No. 18.  
10 Defendants responded and Gantchev replied. ECF Nos. 20, 21.

11                  On July 14, 2017, Defendants filed a Motion to Consolidate seeking consolidation of this  
12 case, 2:17-cv-00185-RFB-CWH, with related case 2:17-cv-01692-JAD-PAL. ECF No. 23.  
13 Gantchev responded and Defendants replied. ECF Nos. 25, 27.

14                  On October 30, 2017, the Court granted the Motion to Consolidate. ECF No. 29. Plaintiff  
15 Georges and Georges LLC, d/b/a LV Cars, thereby joined the suit as a consolidated Plaintiff.<sup>1</sup> On  
16 February 8, 2018, the Court granted leave for filing of the Third Amended Complaint and denied  
17 the Motion to Dismiss without prejudice. ECF No. 30.

18                  The Third Amended Complaint, which is the operative complaint in this matter, was filed  
19 on February 9, 2018. ECF No. 31. The Third Amended Complaint alleges the following claims  
20 against all Defendants: (1) Violation of 15 U.S.C. Section 1681s-2(b) of the Fair Credit Reporting  
21 Act (“FCRA”); (2) Statutory Deceptive Trade Practices and Consumer Fraud in Violation of NRS  
22 41.600(2)(e) and NRS 598.0913; (3) Statutory Deceptive Trade Practices and Consumer Fraud in  
23 Violation of NRS 41.600(2)(e) and NRS 598.0915(14)-(16); (4) Statutory Deceptive Trade  
24 Practices and Consumer Fraud in Violation of NRS 41.600 and NRS 598.092; (5) Fraudulent  
25 Misrepresentation; and (6) Unjust Enrichment. ECF No. 31.

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27                  <sup>1</sup> The parties dispute whether Georges and Georges LLC, d/b/a LV Cars is a plaintiff in  
28 this case following consolidation. The Court clarifies that it is. Georges and Georges LLC, d/b/a/ LV  
Cars, does not lose its status as a plaintiff pursuing relief from Defendants just because its case  
was consolidated with this one. The Court clarifies that Georges and Georges LLC, d/b/a/ LV  
Cars, joined the operative Third Amended Complaint.

1                   Defendants filed an Answer on February 22, 2018. ECF No. 32. In the Answer, Defendant  
2 3rd Generation, Inc. d/b/a California Auto Finance (“CAF”) alleged counterclaims against  
3 Plaintiffs for (1) Fraudulent Misrepresentation; (2) Deceptive Trade Practices and Consumer Fraud  
4 in Violation of NRS 41.600(2)(e) and NRS 598.0915(15); (3) Deceptive Trade Practices in  
5 Violation of NRS 598.092(8); and (4) Declaratory Relief. ECF No. 32. Plaintiffs filed an Answer  
6 on March 14, 2018. ECF No. 33. The Court entered a scheduling order on April 5, 2018. ECF  
7 No. 35.

8                   Defendants filed their instant Motion for Summary Judgment on December 10, 2018. ECF  
9 No. 54. Plaintiffs responded and Defendants replied. ECF No. 58, 61.

10                  Plaintiffs also filed their instant Motion for Summary Judgment on December 10, 2018.  
11 ECF No. 55. Defendants responded and Plaintiffs replied. ECF No. 59, 60.

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### 13                  **III.    LEGAL STANDARD**

14                  Summary judgment is appropriate when the pleadings, depositions, answers to  
15 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
16 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
17 Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When considering  
18 the propriety of summary judgment, the court views all facts and draws all inferences in the light  
19 most favorable to the nonmoving party. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir.  
20 2014). If the movant has carried its burden, the non-moving party “must do more than simply  
21 show that there is some metaphysical doubt as to the material facts . . . . Where the record taken  
22 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
23 issue for trial.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (alteration in original) (quotation marks  
24 omitted).

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### 26                  **IV.    FACTUAL BACKGROUND**

27                  **A. Undisputed Facts**

28                  The Court finds the following facts to be undisputed.

1 Plaintiff Gantchev is a co-owner and the President of Plaintiff Georges and Georges LLC,  
2 d/b/a LV Cars. LV Cars sells used cars and allows consumers to finance vehicles with seller-  
3 backed financing.

4 Defendant CAF is a sub-prime auto finance company that purchases seller-backed  
5 automobile purchase loans from dealers, including LV Cars.

6 On November 10, 2014, non-party Brian Guy purchased a 2004 BMW 7 Series from LV  
7 Cars for the total purchase price of \$16,925.36. LV Cars provided Guy with seller-backed  
8 financing in the amount of \$13,925.36, and CAF purchased the contract.

9 Guy defaulted within the first two payments. LV Cars did not repurchase the loan. In  
10 approximately June or July of 2015, the subject vehicle was towed and sold at an auction. In  
11 December 2016, CAF lodged a negative credit reference against Gantchev and returned the  
12 vehicle's title to LV Cars. The negative remark on Gantchev's credit has since been removed.

13 **B. Disputed Facts**

14 Several facts are disputed in this case. The parties dispute whether LV Cars declined to  
15 repurchase the loan either in defiance of its contractual agreement or as the result of a compromise  
16 negotiated between the parties. They further dispute whether Gantchev submitted notice of CAF's  
17 negative credit reporting to a credit reporting agency ("CRA"). The parties dispute whether the  
18 negative credit remark lodged against Gantchev caused a delay on the closing of a home purchase.  
19 The parties dispute whether CAF extorted approximately \$6,000 from Plaintiffs in exchange for a  
20 false promise to remove a negative credit reference. Lastly, the parties dispute whether Defendants  
21 misrepresented the status of the vehicle's title when they returned it to LV Cars subsequent to the  
22 impoundment and sale of the vehicle.

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24 **V. DISCUSSION**

25 **A. FCRA Claim**

26 Defendants argue that Plaintiffs' FCRA claim fails as a matter of law because Gantchev  
27 failed to submit a written dispute to a CRA. The duties of furnishers of credit information pursuant  
28 to FCRA are triggered only upon receiving notice of dispute pursuant to 15 U.S.C.

1 Section 1681i(a)(2). 15 U.S.C. § 1681s-2(b)(1) (“*After* receiving notice pursuant to section  
2 n1681i(a)(2) of this title of a dispute . . . (emphasis added)). Such notice must be sent from a  
3 consumer or reseller to a consumer reporting agency. 15 U.S.C.A. § 1681i(a)(2)(A). “The notice  
4 shall include all relevant information regarding the dispute that the agency has received from the  
5 consumer or reseller.” Id. If a plaintiff cannot point to evidence showing that a CRA received  
6 notice of a dispute, which triggers the CRA’s duty to notify the furnisher and the furnisher’s duty  
7 to investigate, then the plaintiff’s FCRA claims fail as a matter of law. Young v. Equifax Credit  
8 Info. Servs., Inc., 294 F.3d 631, 639–40 (5th Cir. 2002). “[C]ourts have uniformly reached th[e]  
9 conclusion” that “under the plain language of the statute, the duty of a furnisher of credit  
10 information to investigate a credit dispute is triggered only after the furnisher receives notice of  
11 the dispute *from a consumer reporting agency*, not just the consumer.” Aklagi v. Nationscredit  
12 Fin., 196 F. Supp. 2d 1186, 1193 (D. Kan. 2002) (compiling cases across districts).

13 The Court finds that Plaintiffs cannot point to sufficient evidence to show that a CRA  
14 received notice of the dispute. Plaintiffs cite to Equifax’s website, which features an online portal  
15 to submit disputes. Plaintiffs next point to Gantchev’s deposition and his interrogatory responses,  
16 in which he stated that he provided notice to Equifax online. ECF No. 58-1 at 45 (“Yes, I did  
17 [send written notice]. . . . I did it online.”); ECF No. 58-4 (“I was forced to report the issue to  
18 Experian.”). Plaintiffs identify no other evidence in support of notice, and the evidence identified  
19 is insufficient as a matter of law. Because a link to an online portal does not constitute evidence  
20 that Gantchev utilized that portal, Plaintiffs’ only evidence is Gantchev’s self-serving statement  
21 that he supplied notice. “A conclusory, self-serving affidavit, lacking detailed facts and any  
22 supporting evidence, is insufficient to create a genuine issue of material fact.” F.T.C. v. Publ’g  
23 Clearing House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1997). Moreover, Plaintiff proffers no  
24 evidence whatsoever regarding the content of any notice and therefore cannot show that the notice  
25 included “all relevant information regarding the dispute” as required by Section 1681i(a)(2)(A).

26 Because Plaintiffs cannot show more than a metaphysical doubt regarding the statutory  
27 requirement to provide sufficiently detailed notice to the CRA, Plaintiffs cannot prove a FCRA  
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1 claim against Defendants. The Court therefore grants summary judgment in favor of Defendants  
2 as to the FCRA claim.

3 **B. State Law Claims**

4 Defendants argue that Plaintiffs' state law claims are preempted by FCRA. As a default,  
5 the FCRA does not preempt state law, but the statute lists several exceptions. 15 U.S.C.  
6 § 1681t(b)-(c). Pursuant to one exception, FCRA preempts state law "with respect to any subject  
7 matter regulated under" Section 1681s-2, with two only exceptions under Massachusetts and  
8 California law. 15 U.S.C. § 1681t(b)(1)(F). Plaintiffs' FCRA claim arises exclusively under  
9 Section 1681s-2, which governs the duties of furnishers of information (a) to provide accurate  
10 information and (b) upon notice of dispute.

11 Plaintiffs argues that the state law claims arise out of Defendants' fraudulent and deceptive  
12 trade practices and do not relate to whether or not Defendants complied with their responsibilities  
13 in furnishing information. The Court finds that Plaintiffs' state law claims are preempted to the  
14 extent they arise from the allegations that Defendants lodged a negative credit reference against  
15 Gantchev in breach of their duties as furnishers of information, the duties of which are regulated  
16 under Section 1681s-2. However, the Court finds that Plaintiffs plead factual bases for their claims  
17 that do not arise from allegations that Defendants breached their duties as furnishers of  
18 information. Specifically, Plaintiffs allege that CAF extorted approximately \$6,000 from Plaintiffs  
19 in exchange for a false promise to remove a negative credit reference. Plaintiffs further allege that  
20 Defendants sent LV Cars the original title to the vehicle purporting to transfer title of the vehicle  
21 to Gantchev, but that the title was worthless as the vehicle had already been sold at an auction by  
22 a tow company. To the extent Plaintiffs' state law claims for deceptive trade practices, fraud, and  
23 unjust enrichment are based on these facts, which are unrelated to the scope of Defendants' duties  
24 as furnishers, the Court finds that Plaintiffs' state law claims are not preempted.

25 As to these claims that are not preempted, the Court finds that Plaintiffs have met their  
26 evidentiary burden to demonstrate a genuine issue for trial. Plaintiffs allege deceptive trade  
27 practices, consumer fraud, fraudulent misrepresentation, and unjust enrichment. Consumer fraud  
28 and deceptive trade practice in violation of Nevada law occur when one "[k]nowingly makes any

1 [ ] false representation in a transaction” or “[k]nowingly misrepresents the legal rights, obligations  
2 or remedies of a party to a transaction.” NRS §§ 41.600(2)(e), 598.0915(15), 598.092(8). The  
3 elements of a fraudulent misrepresentation claim are:

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1. A false representation made by the defendant;
2. Defendant’s knowledge or belief that the representation is false (or insufficient  
basis for making the representation);
3. Defendant’s intention to induce the plaintiff to act or to refrain from acting in  
reliance upon the misrepresentation;
4. Plaintiff’s justifiable reliance upon the misrepresentation; and
5. Damage to the plaintiff resulting from such reliance.

9 Bulbman, Inc. v. Nevada Bell, 825 P.2d 588, 592 (Nev. 1992). The elements of unjust enrichment  
10 are: (1) “the plaintiff confers a benefit on the defendant,” (2) “the defendant appreciates such  
11 benefit,” and (3) there is “acceptance and retention by the defendant of such benefit under  
12 circumstances such that it would be inequitable for him to retain the benefit without payment of  
13 the value thereof.” Certified Fire Prot. Inc. v. Precision Constr., 283 P.3d 250, 257 (Nev. 2012)  
14 (citation omitted).

15 Genuine issues remain as to the facts required to prove each standard. Gantchev provided  
16 sufficiently detailed deposition testimony in support of his allegations that Carlos Navas threatened  
17 him with litigation and that he and Navas executed a verbal contract to exchange two payments of  
18 \$3,000 for ownership of the vehicle. See ECF No. 55-1 at 29–30. He testified that he paid CAF  
19 via two wire transactions, and that when he received the title and vehicle history, he learned that  
20 he had paid for a valueless title document. See id. at 41. Construed in a light most favorable to  
21 Plaintiffs, Gantchev’s testimony supports Plaintiffs’ theory that Defendants knowingly made a  
22 false representation to Gantchev regarding the value of the title, despite their knowledge that the  
23 vehicle had been sold at auction, and intended for Gantchev to rely on this misrepresentation,  
24 which he justifiably proceeded to do. Pursuant to this theory, Plaintiffs were therefore damaged  
25 by the payment of approximately \$6,000, which was inequitably retained by Defendants.  
26 Gantchev’s deposition testimony provides a sufficient factual basis to proceed to trial on his state  
27 law claims pursuant to his remaining theory of liability.

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### **C. CAF's Counterclaims**

Defendant CAF does not seek summary judgment as to its counterclaims at this time. However, Plaintiffs' motion seeks summary judgment in their favor with respect to these counterclaims. Plaintiffs argue that CAF has failed to produce any evidence in support of its fraudulent misrepresentation, deceptive trade practices, consumer fraud, and declaratory relief claims against Plaintiffs.

In its counterclaims, CAF alleges that Plaintiffs knowingly made false representations that the consumers had been vetted, were a good moral and financial risk, and had paid a full down payment. The Court incorporates by reference the legal standards for consumer fraud, deceptive trade practices, and fraudulent misrepresentation detailed above. A declaratory relief claim can be pursued for any question regarding construction of a contract. See NRS § 30.040(1).

The Court disagrees with Plaintiffs' assertion that CAF has failed to provide evidence in support of its claims. CAF has shown that the Master Dealer Agreement ("MDA") includes terms that the consumers were a good moral and financial risk and that they had paid a down payment. ECF No. 54-4. It has presented evidence that an unusually high number of the contracts sold by LV Cars to CAF had to be charged off. ECF No. 54-3 at 4. It also provides evidence that Plaintiff never received the represented down payments, as the business records provided in response to CAF's request for production of documents reflect no deposits on or about the relevant dates. ECF No. 59-18,19. CAF has therefore raised genuine disputes of material fact as to whether Plaintiffs knowingly made false representations in a transaction upon which CAF relied to its detriment. The Court denies summary judgment in favor of Plaintiffs as to CAF's counterclaims.

## VI. CONCLUSION

Accordingly,

**IT IS ORDERED** that Defendants' Motion for Summary Judgment (ECF No. 54) is GRANTED in part and DENIED in part. Plaintiffs' first claim for violation of the Fair Credit Reporting Act is DISMISSED. Plaintiffs' state law claims proceed only under the factual theory discussed above.

1                   **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Summary Judgment (ECF No.  
2 55) is DENIED.

3                   **IT IS FURTHER ORDERED** that the parties file a Joint Pretrial Order one month from  
4 the date of entry of this Order regarding Plaintiffs' remaining state law claims and CAF's  
5 counterclaims.

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7                   DATED: September 26, 2019.

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RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE